

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9765 OF 2004

Pam-Pac Machines Pvt. Ltd.

..Petitioner.

Vs.

K. Eshwara Krishnan

..Respondent.

...

Mr.Ram Singh i/b Mr. Rohit Shetty for the Petitioner.

Mr. Saroj Joshi i/b Mr. S.V. Pitre for the Respondent.

...

CORAM : [DR.D.Y.CHANDRACHUD](#), J.

13th April, 2006.

P.C.:

1. By consent the writ petition is taken on Board for admission and final disposal. Rule made returnable forthwith.

2. The relevant dates are that a suit for the recovery of money came to be instituted on 17th February, 2004. The Writ of summons was issued on 4th February, 2004. The period of 90 days for filing of a written statement would have expired on 5th May, 2004. Even prior thereto on 20th April, 2004, a 'no Written Statement' order came to be passed by the Trial Court. An application for setting aside that order was moved on 1st July, 2004 which was dismissed on 16th September, 2004 by the learned Trial

Judge.

3. The Trial Judge observed that it had not been specifically stated that as to when the suit summons was served. In the present case, it has been submitted that even assuming that the period of 90 days commenced from 4th February, 2004, the period for the filing of a written statement would have expired only on 5th May, 2004. There is merit in this submission. The Learned Trial Judge has passed a No Written Statement order even before the 90 days had expired. In these circumstances, there is no reason why the Petitioner should not be allowed to defend the suit by filing the written statement. In the circumstances, the impugned order dated 16th September, 2004 of the Trial Court is quashed and set aside. Written statement to be filed within a period of two weeks which shall be taken on record by the Learned Trial Judge. The Petition shall stand disposed of in the aforesaid terms. There shall be no order as to costs.